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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

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10 UNITED STATES OF AMERICA, )  
11 PLAINTIFF, ) 2:03-CR-000546-HDM-RJJ  
12 VS. ) ORDER ON  
13 ) UNITED STATES' MOTION TO  
14 HENRY LEE STUCKEY, ) WITHDRAW WITHOUT PREJUDICE  
15 DEFENDANT. ) PETITION TO REVOKE SUPERVISED  
16 ) RELEASE  
17 ) \_\_\_\_\_

18 The United States, through undersigned counsel, and with the agreement of the  
19 United States Office of Probation and Parole, respectfully moves the Court to permit  
20 withdrawal without prejudice the pending Petition to Revoke Defendant's Supervised  
21 Release. In support, the United States notes the following:

22 1. On March 5, 2005, Defendant was sentenced to 34 months imprisonment  
23 with 36 months supervised release to follow in connection with his conviction for Identity  
24 Theft, in violation of Title 18, United States Code, Section 1028.

25 2. Following service of Defendant's term of imprisonment, Defendant began  
26 supervised release. Defendant's supervised release was revoked on or about August 24,  
2010. On December 3, 2010, Defendant was placed back on supervised release.

3. On January 11, 2010, with the agreement of the Office of the United States

1 Attorney, the United States Office of Probation and Parole filed under seal a second Petition  
2 for Revocation of Supervised Release, the basis of which includes offenses presently under  
3 federal investigation.

4 4. On January 12, 2011, Defendant reported to the Office of Probation and  
5 Parole as instructed by his probation officer. Defendant was informed by his probation  
6 officer that an arrest warrant had been issued by the district court and that Defendant was  
7 to be taken into federal custody to answer the Petition. Defendant assaulted the probation  
8 officer by pushing him into a door, fled from the office, and was subsequently apprehended  
9 by law enforcement. Consequently, on January 19, 2011 Defendant was indicted for the  
10 offense of Assault of a Federal Officer, in violation of Title 18, United States Code, Section  
11 111, in Nevada U.S. District Court Case Number 2:11-cr-00021-PMP-RJJ. Defendant has  
12 been ordered detained pending trial as a risk of non-appearance and a danger to the  
13 community.

14 5. On January 12, 2011, the United States Office of Probation and Parole filed  
15 an Addendum to the Petition seeking revocation of supervised release based on the conduct  
16 underlying the assault indictment.

17 6. The hearing for revocation of Defendant's supervised release is presently  
18 scheduled for February 24, 2011.

19 7. The United States submits that it is in the best interest of the parties, the  
20 conservation of judicial resources, and the ends of justice that the Petition seeking  
21 Revocation of Supervised Release be withdrawn without prejudice pending the investigation  
22 and potential resolution of the matters forming the basis of the Petition. Requiring  
23 Defendant to present a defense to the supervised release petition at this time could  
24 compromise his ability to properly defense the substantive charges, both that pending and  
25 those under investigation. Further, the United States submits that because Defendant has  
26 been detained on the Assault indictment, he does not pose a present danger to the

1 community and that moving forward on the Petition could compromise the integrity of an  
2 ongoing investigation and the confidentiality of informants and information related to  
3 fraudulent activity in which Defendant is believed to have engaged.

4       8.     For these reasons, the United States seeks the Court permission to withdraw  
5 the Petition with leave to re-file the Petition upon completion of the investigation. The  
6 undersigned has conferred with counsel for Defendant, and she has no objection to  
7 withdrawal of the Petition with leave to re-file.

8 DATED this the 31st day of January, 2011.

Respectfully Submitted,

DANIEL G. BOGDEN  
UNITED STATES ATTORNEY

/s/ Christina M. Brown  
Christina M. Brown  
Assistant United States Attorney

## **CERTIFICATION OF SERVICE**

16 The undersigned certifies that she has served a copy of the foregoing to Shari  
17 Kaufman, Esq., counsel for Defendant, via electronic case filing this the 31<sup>st</sup> day of  
18 January, 2011.

/s/ Christina M. Brown  
Christina M. Brown  
Assistant United States Attorney

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8 UNITED STATES OF AMERICA, )  
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10 VS. )  
11 ) **FINDINGS OF FACT AND ORDER**  
12 HENRY LEE STUCKEY, )  
13 DEFENDANT. )  
14

15 **FINDINGS OF FACT**

16 Based on the Motion of counsel, and good cause appearing therefore, the Court  
17 finds that:

18 1. Defendant has been charged with Assault of a Federal Officer in Nevada  
19 U.S. District Court Case Number 2:11-cr-00021-PMP-RJJ. This conduct forms, in part,  
20 the basis of the government's Petition to revoke supervised release.  
21 2. Defendant is under investigation for additional offenses which also form  
22 the basis for revocation of supervised release. Presentation of evidence related to these  
23 offenses could compromise an ongoing investigation and cause Defendant to limit his  
24 ability to properly defend the substantive charges, both those pending and under  
25 investigation.

26 3. It is in the best interest of the parties, the conservation of judicial  
resources, and the ends of justice that the Petition seeking Revocation of Supervised

- 1 Release be withdrawn without prejudice pending the investigation and potential
- 2 resolution of the matters forming the basis of the Petition

3           4.     Defendant is in custody and does not object to withdraw of the Petition  
4 with leave to re-file.

5        5.     Additionally, denial of this request could result in a miscarriage of justice,  
6 taking into account the exercise of due diligence.

## **CONCLUSIONS OF LAW**

8 The ends of justice served are best served by granting the United States' request  
9 to withdraw the Petition to Revoke Supervised Release without prejudice and with leave  
10 to re-file.

## ORDER

12           **IT IS HEREBY ORDERED** that the Petition to Revoke Supervised Release is  
13           Hereby Withdrawn WITHOUT PREJUDICE.

14 DATED this 15th day of February 2011.

~~Howard D McKibben~~

**UNITED STATES DISTRICT JUDGE**